

Message

From: Chen, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=57DEC16706E44CCC8E3CD744745D4700-CHEN, ALEXANDER]
Sent: 4/3/2020 2:59:36 AM
To: Field, Jeff [Field.Jeff@epa.gov]
Subject: RE: COVID-19 Implication - Request for Clarification

Ex. 5 Attorney Client (AC)

Alex Chen
Senior Counsel, Air
EPA Region 7
11201 Renner Boulevard
Lenexa, KS

(913) 551-7962

From: Field, Jeff <Field.Jeff@epa.gov>
Sent: Thursday, April 02, 2020 3:51 PM
To: Chen, Alexander <Chen.Alex@epa.gov>
Subject: FW: COVID-19 Implication - Request for Clarification

Alex,

Ex. 5 Attorney Client (AC)

Jeff

From: Johnson, Keith <johnson.keith@epa.gov>
Sent: Tuesday, March 31, 2020 7:51 AM
To: Field, Jeff <Field.Jeff@epa.gov>
Cc: Algoe-Eakin, Amy <Algoe-Eakin.Amy@epa.gov>
Subject: RE: COVID-19 Implication - Request for Clarification

Jeff,

The example questions had multiple options, so I'm still a little confused. The MATS rule requires 4 successful tests to completed within 12 months and 12 consecutive tests (3 years) to qualify. Would the missed test count as a successful test quarter or skipped test (meaning it would take longer than 3 years to qualify)?

Q - If a facility is required to conduct a RATA (performance evaluation) in (March, April or May 2020) and due to COVID-19 implications, they are not able to get the testing completed, are they excused from doing their

RATA until the next quarter (June, July or August 2020)?...until the next year (March, April or May 2021)?...should they conduct a RATA as soon as practical once the temporary policy has ended?

Q - If they miss their RATA should they conduct a CGA (usually done in-house) if it can be conducted in (March, April or May 2020)?

Q - For facilities subject to MATS looking to qualify for LEE status, if they are conducting quarterly HCl performance tests, and they cannot complete testing in (March, April or May 2020), are they excused from testing that quarter? To qualify for LEE status, a facility must conduct 12 consecutive tests and demonstrate they are below <50% of their limit. If a facility misses a quarterly test, do they need to start testing to qualify for LEE status over?...do they just pick up with the next quarter and complete 12 consecutive tests to determine compliance status?...should they conduct the missed test as soon as practical after the temporary policy ends and work to get 4 tests completed within the 12 months to continue their goal of qualifying for LEE status?

*Q - If a facility is required to submit a quarterly report and unable to get the report submitted by its regulatory due date due to COVID-19 implications, are they excused from submitting the missed report **or** should they submit the report as soon as practical after the temporary policy ends?*

From: Field, Jeff <Field.Jeff@epa.gov>
Sent: Tuesday, March 31, 2020 6:08 AM
To: Johnson, Keith <johnson.keith@epa.gov>
Cc: Algoe-Eakin, Amy <Algoe-Eakin.Amy@epa.gov>
Subject: RE: COVID-19 Implication - Request for Clarification

Keith,

That would be my interpretation. Amy?

*Jeffrey L. Field, Chief, Air Branch
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From: Johnson, Keith <johnson.keith@epa.gov>
Sent: Monday, March 30, 2020 3:31 PM
To: Field, Jeff <Field.Jeff@epa.gov>
Cc: Algoe-Eakin, Amy <Algoe-Eakin.Amy@epa.gov>
Subject: FW: COVID-19 Implication - Request for Clarification

Jeff – I received the following questions below from MDNR. I'm not sure of EPA's interpretation and response for these examples. Looking for guidance to give a response that is consistent with headquarters.

From: Sidebottom, Steve <Steve.Sidebottom@dnr.mo.gov>

Sent: Monday, March 30, 2020 3:16 PM

To: Johnson, Keith <johnson.keith@epa.gov>

Cc: Vander Veen, Josh <josh.vanderveen@dnr.mo.gov>; Guinn, Laura <Laura.Guinn@dnr.mo.gov>; Swartz, Richard <richard.swartz@dnr.mo.gov>; Wood, Chris <Chris.Wood@dnr.mo.gov>

Subject: COVID-19 Implication - Request for Clarification

Hi Keith,

The Program recently received the document titled - COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program dated (March 26, 2020). There is a short paragraph on Page 3 of 7 that we would like to request clarification with regards to its intent.

"In general, absent exigent circumstances, the EPA does not plan to ask facilities to "catch-up" with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months."

As this reads, it implies that any monitoring (testing) or reporting that is done on a quarterly time frame, if it is not completed due to COVID-19 implications, would be excused and that facilities would not be required to make it up. Is this correct?

Examples:

Q - If a facility is required to conduct a RATA (performance evaluation) in (March, April or May 2020) and due to COVID-19 implications, they are not able to get the testing completed, are they excused from doing their RATA until the next quarter (June, July or August 2020)?...until the next year (March, April or May 2021)?...should they conduct a RATA as soon as practical once the temporary policy has ended?

Q - If they miss their RATA should they conduct a CGA (usually done in-house) if it can be conducted in (March, April or May 2020)?

Q - For facilities subject to MATS looking to qualify for LEE status, if they are conducting quarterly HCl performance tests, and they cannot complete testing in (March, April or May 2020), are they excused from testing that quarter? To qualify for LEE status, a facility must conduct 12 consecutive tests and demonstrate they are below <50% of their limit. If a facility misses a quarterly test, do they need to start testing to qualify for LEE status over?...do they just pick up with the next quarter and complete 12 consecutive tests to determine compliance status?...should they conduct the missed test as soon as practical after the temporary policy ends and work to get 4 tests completed within the 12 months to continue their goal of qualifying for LEE status?

Q - If a facility is required to submit a quarterly report and unable to get the report submitted by it's regulatory due date due to COVID-19 implications, are they excused from submitting the missed report or should they submit the report as soon as practical after the temporary policy ends?

Please clarify the language? Should you need to speak with me directly, please know that I am working from home and can be reached at (5732) 378-4025.

Thank you.

Steve Sidebottom.